

**THE OFFICE OF REGULATORY STAFF
DIRECT TESTIMONY AND EXHIBITS
OF**

JAMES M. MCDANIEL

August 1, 2012



DOCKET NO. 2012-253-C

**Petition of the Office of Regulatory Staff for Commission to Order a
Rule to Show Cause as to Why the Certificates of Public
Convenience and Necessity for Certain Providers of
Telecommunications Services Should Not Be Revoked for Failure to
Comply with Regulation 103-607 (Bond)**

DIRECT TESTIMONY

FOR

THE OFFICE OF REGULATORY STAFF

DOCKET NO. 2012-253-C

**IN RE: PETITION FOR A RULE TO SHOW CAUSE AS TO WHY THE
CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY FOR CERTAIN
PROVIDERS OF TELECOMMUNICATIONS SERVICE SHOULD NOT BE REVOKED
FOR FAILURE TO COMPLY WITH REGULATION 103-607 (BOND)**

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND OCCUPATION.

A. My name is James M. McDaniel. My business address is 1401 Main Street, Suite 900, Columbia, South Carolina 29201. I am employed by the state of South Carolina as a Program Manager in the Telecommunications Department of the Office of Regulatory Staff ("ORS").

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?

A. The purpose of my testimony is to present evidence that certain telecommunications carriers subject to this Commission's jurisdiction have failed to comply with S.C. Code Reg. Ann. 103-607 (Supp. 2011) which requires carriers to post a bond.

Q. ARE TELECOMMUNICATIONS CARRIERS REQUIRED TO POST A BOND?

A. Yes. S.C. Code Reg. Ann 103-607 (Supp. 2011), applies to telecommunications carriers under the jurisdiction of the Commission which provide retail residential local exchange services and which individually or together with their affiliates, have not invested at least five million dollars in telecommunications facilities in the State of South Carolina.

Q. DID THE PUBLIC SERVICE COMMISSION ESTABLISH AN ALTERNATIVE METHOD OF DETERMINING THE AMOUNT OF A BOND FOR SMALL CARRIERS THAT REQUESTED A WAIVER?

A. Yes. The Commission in its Order No. 2012-175, dated March 29, 2012 approved an alternative method for determining the amount of bond for those carriers requesting a waiver of the minimum amount of the bond. The alternative method to determine the amount of the bond may be calculated by multiplying the average monthly charge for basic local service by the number of customers the carrier has in South Carolina, multiplied by two months.

Q. DID ORS NOTIFY ALL TELECOMMUNICATION CARRIERS OF THE REGULATION?

A. Yes. When the regulation became effective, ORS notified all telephone utilities of the new regulation via e-mail and U.S. Mail. Because a large number of carriers failed to respond to the initial ORS notification, a Notice of Non-Compliance was sent to all non-compliant carriers. A copy of the initial and non-compliance notification is attached as Exhibit JMM-1.

Q. PLEASE EXPLAIN EXHIBIT JMM-2 ATTACHED TO YOUR TESTIMONY.

A. At the time this testimony was prepared, Exhibit JMM-2 identified those telecommunication carriers that failed to comply with the regulation or in some cases failed to file a bond after a partial waiver of the Commission regulation was approved for the telephone carrier.

Q. WHAT RESPONSE, IF ANY, HAS ORS RECEIVED FROM THE CARRIERS NAMED IN THE RULE TO SHOW CAUSE PETITION?

1 A. The ORS has received responses from some carriers since the filing of this
2 petition. Some companies have notified ORS and the Commission that the Company does
3 not have any retail residential local exchange customers, while other companies have
4 requested and received a partial waiver of the regulation. Those companies receiving a
5 partial waiver were required to file a bond consistent with the alternative method ordered
6 by the Commission. To the extent additional companies come into compliance before the
7 Commission hearing, ORS will present a revised Exhibit JMM-2 to accurately reflect
8 only those companies who remain out of compliance at the time of the Commission
9 hearing.

10 **Q. WHAT ACTION DOES THE ORS RECOMMEND THE COMMISSION TAKE?**

11 A. The ORS recommends that the Commission revoke the Certificates of Public
12 Convenience and Necessity for those telecommunications carriers that have not complied
13 with Regulation 103-607.

14 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

15 A. Yes it does.
16

C DUKES SCOTT
EXECUTIVE DIRECTOR

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DAN F. ARNETT
CHIEF OF STAFF

DAWN M. HIPPIE
DIRECTOR

TELECOMMUNICATIONS, TRANSPORTATION, WATER/WASTEWATER

August 8, 2011

*****REVISED REGULATION NOTICE****

Subject: 26 S.C. Code Ann. Regs. 103-607 (Supp. 2011)
Telephone Utilities Providing Retail Residential Local Exchange Services

To: All Telecommunications Companies Operating in the State of South Carolina

Per the recently revised regulation 26 S.C. Code Ann. Regs. 103-607 (Supp. 2011), all telephone utilities that provide retail residential local exchange service that have not invested at least five million dollars in telecommunications facilities in South Carolina will be required to file a bond or other security mechanism with the Public Service Commission of South Carolina ("PSC"). A copy of the bond should also be provided to the South Carolina Office of Regulatory Staff ("ORS"). This new regulation became effective on June 24, 2011.

In order to demonstrate compliance to the ORS and PSC, each company must either:

- 1) Verify in writing that it does not provide residential local exchange service; or
- 2) Verify that the Company individually or together with its affiliates has invested at least five (5) million dollars in telecommunications facilities in South Carolina; or
- 3) Apply for and receive a waiver from the Public Service Commission; or
- 4) File a bond or other security mechanism consistent with Regulation 103-607.

Each Telecommunications Company must demonstrate compliance with the new regulation by December 31, 2011. A copy of Regulation 103-607 is attached for your convenience.

Please contact me via e-mail or phone to discuss the regulation or requirements for maintaining compliance.

Sincerely,

Jim McDaniel
Program Manager
South Carolina Office of Regulatory Staff
803-737-0812
jmcdanie@regstaff.sc.gov

Enclosure

Document No. 4138

PUBLIC SERVICE COMMISSION

CHAPTER 103

Statutory Authority: 1976 Code Section 58-3-140

As published in the South Carolina State Register Vol. 35, Issue 6

June 24, 2011

103-607. Regulation Governing Telephone Utilities Offering Regulated Prepaid Local Exchange Services and Bonds or Other Security Mechanisms

Text:

103-607. Bonds or Other Security Mechanisms.

This regulation applies to telephone utilities who provide retail residential local exchange services and who individually or together with their affiliates, have not invested at least five million dollars in telecommunications facilities in the State of South Carolina. The commission may waive this requirement upon petition by the telephone utility if the telephone utility provides evidence of financial stability as deemed appropriate by the commission. This regulation does not apply to Commercial Mobile Radio Services. The commission shall determine the type and the amount of bond or other security mechanism to be filed by the carrier with the commission and the ORS. The commission may order the carrier to file a performance bond or post an irrevocable letter of credit or certificate of deposit. In determining the amount of the performance bond, irrevocable letter of credit, or certificate of deposit, the commission may use, at a minimum, any commercially reasonable, acceptable method, including the following criteria: number of customers, retail price for service, and financial resources of the carrier.

a. **Performance Bond.** Performance bonds must be issued by an A-grade insurer acceptable to the commission and must be posted with the commission and a copy provided to the ORS. However, the amount of the bond shall be no less than \$100,000. An updated bond shall be filed with the commission and a copy provided to the ORS annually.

b. **Irrevocable Letter of Credit.** An irrevocable letter of credit shall be issued by a financial institution acceptable to the commission. The amount of the irrevocable letter of credit shall be determined by the commission; however, the amount of the letter of credit shall be no less than \$100,000. An updated irrevocable letter of credit shall be filed with the commission and a copy provided to the ORS annually.

c. **Certificate of Deposit.** The certificate of deposit shall be issued by a financial institution acceptable to the commission and shall be no less than \$50,000. An updated certificate of deposit shall be filed with the commission and a copy provided to the ORS annually.

Forfeiture of Bond or Other Security Mechanism

The commission, after notice and hearing, may order all or part of any bond or other security forfeited upon finding that the telephone utility has abandoned service to customers.

C. DUKES SCOTT
EXECUTIVE DIRECTOR

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DAN F. ARNETT
CHIEF OF STAFF

DAWN M. HIPPIE
DIRECTOR

TELECOMMUNICATIONS, TRANSPORTATION, WATER/WASTEWATER

March 15, 2012

NOTICE OF NON-COMPLIANCE

Subject: 26 S.C. Code Ann. Regs. 103-607 (Supp. 2011)
Telephone Utilities Providing Retail Residential Local Exchange Services

To: Telephone Utilities Operating in South Carolina

On August 8, 2011, the South Carolina Office of Regulatory Staff ("ORS") notified all telephone carriers holding Certificates of Public Convenience and Necessity to provide telecommunications in South Carolina that revised regulations had become effective on June 24, 2011. Revised regulation 26 S.C. Code Ann. Regs. 103-607 (Supp. 2011) requires all telephone utilities that provide retail residential local exchange service that have not invested at least five million dollars in telecommunications facilities in South Carolina to file a bond or other security mechanism with the Public Service Commission of South Carolina ("PSC").

The ORS records indicate your company is out of compliance with the PSC bond requirement. Companies were required to file a bond by no later than December 31, 2011. In order to maintain a compliant operating certificate, your company must:

- 1) Verify in writing that it does not provide residential local exchange service; or
- 2) Verify that the Company individually or together with its affiliates has invested at least five (5) million dollars in telecommunications facilities in South Carolina; or
- 3) File a bond or other security mechanism consistent with Regulation 103-607.

This information is due to ORS and the PSC by no later than **April 15, 2012**. Failure to comply with this PSC regulation will result in revocation of your operating certificate.

Please contact me if you have any questions related to the bond requirement.

Sincerely,

Jim McDaniel
Program Manager
South Carolina Office of Regulatory Staff
803-737-0812
jmcdanie@regstaff.sc.gov

OrganizationName	Registered Agent	Secretary of State status	Foreign or Domestic	Docket #	Order # ¹	Date Certificate Issued
ComTech21, LLC Michael Brady - EVP One Barnes Park, South Wallingford CT 06492	Incorp Services Inc 317 Ruth Vista Rd Lexington SC 29073	Foreign	Good Standing	2004-54-C	2004-312	6/30/2004
Covista, Inc. Mark Lammert - CPA., P.A./Compliance Solutions Inc 740 Florida Central Pkwy, Ste 2028 Longwood FL 32750	AGENT RESIGNED	Foreign	Good Standing	2003-200-C	2003-594	10/3/2003
dPi Teleconnect, LLC Melanie King - Regulatory Affairs Mgr 1330 Capital Pkwy Carrollton TX 75006-3647	C T Corporation System 75 Beattie Place Two Insignia Financial Plaza Greenville SC 29601	Foreign	Dissolved	1998-640-C	1999-228	3/30/1999
Flatel, Inc. DBA Telephone USA Adriana Solar - CFO 2300 Palm Beach Lakes Blvd. Executive Center Ste 100 West Palm Beach FL 33409	Oscar Garcia 6300 White Horse Rd #118 Greenville SC 29611	Foreign	Forfeiture	1999-515-C	2000-380	4/26/2000
Genesis Telecommunications Company, LLC Barbara Bennett - General Manager PO Box 675 Greenwood SC 29648	John Lawrence 1117 Reynolds Ave Greenwood SC 29646	Domestic	Good Standing	2000-350-C	2000-873 ¹	10/27/2000
Global NAPS South Carolina, Inc. Larry Cross - Regulatory Officer 1120 Hancock St Quincy MA 02169-4313	CT Corporation System 2 Office Park Ct, Ste 103 Columbia SC 29223	Foreign	Forfeiture	2001-503-C	2002-258 ¹	4/10/2002
iNetworks Group, Inc. Agnes Rivera - Manager of Tax 125 S Wacker Dr, Ste 2510 Chicago IL 60606	CT Corporation System 2 Office Park Ct, Ste 103 Columbia SC 29223	Foreign	Good Standing	2009-164-C	2009-553	8/6/2009
Matrix Telecom, Inc. DBA Matrix Business Technologies Kimberly Geuder - Compliance Reporting Specialist-TMI PO Drawer 200 Winter Park FL 32790-0200	CT Corporation System 2 Office Park Ct, Ste 103 Columbia SC 29223	Foreign	Good Standing	2005-98-C	2005-449	8/25/2005
Navacore, LLC Thomas K. Gwyn - Partner PO Box 3413 Rock Hill SC 29732	Thomas K. Gwyn 2354-B Ebenezer Rd Rock Hill SC 29732	Domestic	Good Standing	2006-111-C	2006-468 ¹	8/4/2006
Navigator Telecommunications, LLC Renee Bethea - Tax Accountant PO Box 13860 North Little Rock AR 72113-0860	National Corporate Research, Ltd. 2 Office Park Ct, Ste 103 Columbia SC 29223	Foreign	Good Standing	1999-176-C	1999-572 ¹	8/11/1999

OUT OF COMPLIANCE - DOCKET #2012-253-C

EXHIBIT JMM-2

Nexus Communications Mark Lammert - CPA.,P.A./Compliance Solutions Inc 740 Florida Central Pkwy, Ste 2028 Longwood FL 32750	Corporation Service Co. 1703 Laurel St Columbia SC 29201	Foreign	Good Standing	2004-59-C	2004-421	9/3/2004
Ring Connection, Inc. Holley Burlison - General Manager PO Box 520 Crestview FL 32536-0535	Tammy M. Fielder 1701 Laurens Rd, Ste A Greenville SC 29607	Foreign	Good Standing	2002-92-C	2002-503	7/8/2002
Tele Circuit Network Corporation Lisa Brown - Regulatory & Tax Consultants, LLC 3100 Breckinridge Blvd, Ste 145 Duluth GA 30096-5800	TCS Corporate Services, Inc. 2 Office Park Ct, Ste 103 Columbia SC 29223	Foreign	Forfeiture	2008-398-C	2009-434 ¹	6/18/2009
Tennessee Telephone Service, LLC DBA Freedom Communications USA, LLC Matt Davis - General Manager 220 Creekside Dr Dickson TN 37055	AGENT RESIGNED	Foreign	Good Standing	2004-211-C	2004-567 ¹	11/15/2004
Velocity The Greatest Phone Company Ever, Inc. Nancy Malley - Preparer-BillSoft Services, Inc. 8675 W 96th St, Ste 220 Overland Park KS 66212	National Registered Agents, Inc. 2 Office Park Court, Ste 103 Columbia SC 29223	Foreign	Forfeiture	2009-380-C	2010-1 ¹	1/6/2010
West Communications, Inc. Edward Johnson - President/CEO 2117-B W Palmetto St, Ste 202 Florence SC 29501	Corporation Service Co. 1703 Laurel St Columbia SC 29201	Foreign/ Domestic	Good Standing	2003-336-C	2004-102	3/12/2004

¹ Carriers were granted CLEC and IXC authority in one PSC Order. ORS requests revocation of CLEC authority only.